

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Invasive
Species/Infested Waters Citation
#132985 Issued to Michael K. Kolden

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on July 10, 2012. Administrative Law Judge (ALJ) Richard C. Luis, Conservation Officer Thor Nelson, and Michael K. Kolden participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a Recommendation based on the record created during the Conference. To that end, Officer Nelson and Michael Kolden both testified under oath. The OAH record closed at the conclusion of the Telephone Conference.

STATEMENT OF ISSUE

Whether Michael K. Kolden violated Minn. Stat. § 84D.10, subd. 4(b), when he transported his watercraft on a public road with the drain plug in place?

The Administrative Law Judge concludes that Michael K. Kolden violated Minn. Stat. § 84D.10, subd. 4(b), on May 27, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Department of Natural Resources (Department, DNR) Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.¹

2. On May 27, 2012, Officer Nelson observed Michael K. Kolden drive off a public road onto a DNR access area on the shore of Prior Lake in Scott County while

¹ See Minn. Stat. § 84D.13, subd. 4(4).

pulling a boat. The boat had its drain plug in place during the time it was being transported.²

3. On May 27, 2012, Conservation Officer Thor Nelson issued Citation No. 132985 to Mr. Kolden. The Citation asserted that Mr. Kolden transported a watercraft on a public road with the drain plug in place.³

4. Shortly before May 27, 2012, Officer Nelson had been instructed by his superiors at the Department not to issue any more warnings for plug violations.⁴

5. Mr. Kolden was not aware of the 2011 Statute that outlaws transportation of a boat without pulling the boat's drain plug. He admits he violated that Statute on May 27, 2012.⁵

6. Michael K. Kolden timely appealed the Citation.⁶ He argues that Officer Nelson should have simply issued a warning.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation and Citation, and Mr. Kolden admitted he was transporting a boat with its drain plug in, as charged in the Citation.

3. It is appropriate that the Commissioner affirm Civil Trespass Citation #132985 and require Mr. Kolden to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

² Testimony of Officer Nelson.

³ Citation 132985.

⁴ Testimony of Officer Nelson.

⁵ Testimony of Michael Kolden.

⁶ Appeal Letter (June 15, 2012).

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Michael K. Kolden on May 27, 2012.

Dated: July 19th, 2012

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Recorded Digitally

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Mr. Kolden. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

Mr. Kolden admits he violated Minn. Stat. § 84D.10, subd. 4(b), on May 27, 2012. Under § 84D.13, subd. 4(4), law enforcement personnel may issue either warnings or citations for such violations. Officer Nelson had been instructed by his superiors to issue citations every time he observed violation of the “plugs out” law. The “zero tolerance” instruction resulted after the Department concluded that merely warning the violators had not lessened the frequency of violations of the “plugs out” law.⁷

In this case, there was no abuse of discretion on the part of Officer Nelson, who was following an instruction to cite every violation he observed. Therefore, it is appropriate to uphold the citation against Mr. Kolden.

R. C. L.

⁷ Testimony of Officer Nelson.